

### **REMARKS**

Claims 1-3, 6, 9, 13, 15, 19, 25, 28, 30 and 33 have been amended. Claims 20-22 have been withdrawn from consideration. Claims 1-19 and 23-33 remain in the application.

Claims 9, 19 and 30 were objected to as lacking an antecedent basis for the term "said housing wall". The claims have been amended accordingly. Therefore, Applicant respectfully submits that claims 9, 19 and 30 are in a condition for allowance, which allowance is solicited.

Claims 9, 19 and 30 were rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. In particular, the Examiner references the term "friction wall". The claims have been amended accordingly. Therefore, Applicant respectfully submits that claims 9, 19 and 30 are in a condition for allowance, which allowance is solicited.

Claims 1-5, 7-8, 9, 14-17 and 19 were rejected under 35 U.S.C. §102(e) as being anticipated by Heinrich (EP 0 748 713). The Applicant respectfully traverses this rejection.

European Patent Number 0 748 713 to Heinrich discloses an electronic throttle control that produces a hysteresis effect, and includes a mechanical kick-down. The pedal assembly includes a pedal pad 1 attached to a pedal arm 4 that pivots about a pivot axis 7. As the pedal arm is actuated, the pivotal movement also pivots a lever arm 6 about the pivot axis 7. The lower end of the lever arm 6 includes a projection 13, and the upper end of the lever arm includes a rub surface 12. The middle portion of the lever arm 6 includes a recess 9 having sloping sides. The assembly also includes a housing 2. The assembly further includes a friction element 10 that produces the hysteresis effect. The friction element 10 includes a conical surface that is adjacent the recess 9 in the lever. A spring 11 is disposed between the housing and the friction element 10. In operation, rub surface 12 rubs against the inner surface of the housing as the friction

element 10 slides up and down in the lever arm recess in response to the combined actuation of the pedal arm, lever arm and compression of the spring, to produce a hysteresis effect. Heinrich does not disclose a hysteresis generating means pivotally attached to an upper pedal arm by a pivot pin, as disclosed by the Applicant.

In contradistinction, claim 1 discloses an electronically controlled pedal assembly with hysteresis. The pedal assembly 10 includes a housing 12 having a front wall 14 and an arcuate friction wall extending from an edge of the front wall. The friction wall has a radius of curvature centered on a pedal arm pivot point 20. A pedal arm 22 having an upper pedal arm 32 and a lower pedal arm 34 is rotatably supported at the pedal arm pivot point by a mounting means operatively connected to the housing. The pedal arm pivot point is positioned between the upper pedal arm and lower pedal arm. The pedal assembly further includes a hysteresis generating means 38 pivotally attached to the upper pedal arm by a pivot pin. The pedal assembly further includes a spring 46 positioned between the housing and the hysteresis generating means. One end of the spring is attached to the housing, and the other end of the spring is attached to the hysteresis generating means, and the spring biases the hysteresis generating means against the housing. In operation, depression of the pedal arm and resulting pivotal movement of the hysteresis generating means compresses the spring while increasing a frictional hysteresis force between the arcuate friction wall and the hysteresis generating means that is translated back through the pedal arm, and release of the pedal arm reduces the frictional hysteresis force. Claims 3, 14, 15, 23 and 25 are similar to claim 1, and include additional limitations.

Heinrich '713 does not disclose, anticipate or otherwise suggest the invention of claim 1 as amended. Heinrich '713 merely discloses that the lever arm contains a recess, and the hysteresis generating means is adjacent the recess. Heinrich '713 merely discloses that the hysteresis

generating means freely slides within the recess in an up and down motion, in response to the rotational movement of the pedal arm. Heinrich '713 does not disclose a hysteresis generating means pivotally attached to the upper pedal arm by a pivot pin, as taught by the Applicant. The physical relationship of a hysteresis generating means adjacent to a pedal arm and slidingly movable within a recess in the pedal arm is simply not the same structure as a hysteresis generating means pivotally attached to the pedal arm by a pivot pin, and that pivots relative to the pedal arm. A sliding "connection" is simply not the same structure as a pivotal attachment by a pivot pin. A sliding movement of the friction element relative to the pedal arm is simply not the same as a pivotal, or rotational movement of the friction element relative to the pedal arm about a pivot point.

These are critical structural distinctions between the pedal assembly taught by Heinrich '713 and that taught by the Applicant. The Examiner argues that the hysteresis generating means 10 of Heinrich is pivotally *connected* to the upper pedal arm 6 by the cam surface 10a. Further, it is argued that the hysteresis generating means of Heinrich pivots about the pivot 10a on the outer surface of the upper pedal arm. The Applicant submits that one skilled in the art would know and understand that a member pivotally attached to another member by a pivot pin is a completely different structure than a first member positioned adjacent a second member and the sliding movement of the first member along the cam surface of the second member.

Therefore, it is respectfully submitted that claims 1, 3, 14, 15, 23 and 25, as amended, and the claims dependent therefrom are allowable over the rejection under 35 U.S.C. §102(e).

Claims 6 and 18 were rejected under 35 U.S.C. §103(a) as being unpatentable over Heinrich in view of Applicant's admission that Groups I-IV are not patentably distinct. The Applicant respectfully traverses this rejection for the reasons set forth above with respect to Heinrich. In addition, claims 6 and 18 are dependent claims which are based on an independent

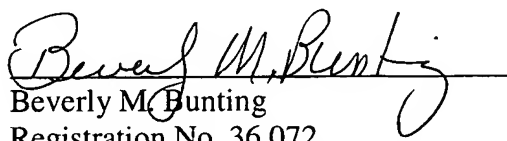
claim that Applicant submits is allowable. Therefore, it is respectfully submitted that claims 6 and 18 are allowable over the rejection under 35 U.S.C. §103(a).

Claims 10-12, 23-27, 29, 31 and 32 and were rejected under 35 U.S.C. §103(a) as being unpatentable over Heinrich in view of DeForest (U.S. Patent No. 6,860,170). The Applicant respectfully traverses this rejection for the reasons set forth above with respect to Heinrich. Therefore, it is respectfully submitted that claims 10-12, 23-27, 29, 31 and 32 are allowable over the rejection under 35 U.S.C. §103(a).

Claims 13 and 33 were objected to as being dependent upon a rejected base claim but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claims 13 and 33 have been amended accordingly.

Based on the above, the Applicant submits that the claims are in a condition for allowance, which allowance is respectfully solicited. If the Examiner finds to the contrary, it is respectfully requested that the undersigned in charge of this application be called at the telephone number given below to resolve any remaining issues.

Respectfully submitted,

  
Beverly M. Bunting  
Registration No. 36,072  
Gifford, Krass, Groh, Sprinkle,  
Anderson & Citkowski, P.C.  
2701 Troy Center Drive, Suite 330  
P.O. Box 7021  
Troy, MI 48007-7021  
(248) 647-6000

Attorney for Applicant

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Erica L. Triner  
Erica L. Triner